STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7440

Petition of Entergy Nuclear Vermont Yankee	)
LLC and Entergy Nuclear Operations, Inc., For	)
Amendment of their Certificates of Public Good	)
and other approvals under 10 V.S.A. §§ 6501-6504	)
and 30 V.S.A. §§ 231(a), 248 & 254, for authority	)
to continue after March 21, 2012, operation of the	)
Vermont Yankee Nuclear Power Station, including	)
storage of spent nuclear fuel	)

REPLY BRIEF
of the
WINDHAM REGIONAL COMMISSION

Contents

Introduction

In this brief Windham Regional Commission (WRC) replies specifically to the July 17, 2009 filing of the Department of Public Service, and to filings by other parties.

As noted in testimony, the Windham Regional Commission neither supports nor opposes this petition. We recognize that in the initial briefs filed on July 17, 2009 the petitioners and IBEW have expressed support for the granting of an extended CPG, while the Vermont Department of Public Service, CLF, VRIRG, NEC and GMPC have all identified flaws they consider sufficient to deny the petition as it currently stands. ANR has taken a position that the petition meets environmental standards and finds affirmatively only with regard to those specific issues. CVPS and VEC have not stated a firm position on the granting or denial of a Certificate.

WRC is the state-designated regional planning commission representing 27 towns and approximately 46,000 residents of Southeastern Vermont, with Commissioners appointed by the selectboard of each member municipality. In contrast, the Department functions under the executive branch of state government and represents all the residents of Vermont. Thus there are reasonably broad similarities in the approach of the Department and WRC. We agree with many of the recommendations made by the Department in its brief, but the concerns of residents in the host region deserve additional consideration. Regional concerns should be addressed and remedied wherever possible, and this is not fully accomplished by the proposals of the Department alone.

WRC issued initial recommendations under Board Rule 5.402, which have been submitted into the record as WRC-TB-2 and WRC-TB-3. These recommendations, as well as prefiled written testimony (WRC-TB) and live testimony of WRC Commissioner Thomas Buchanan on May 26, 2009 constitute the primary recommendations of the Commission. We encourage the Board to carefully review these recommendations, and incorporate them into a Certificate of Public Good, should such a certificate be issued.

As we reviewed the July 17, 2009 brief filed by the Department we took note of several areas of disagreement or omission, and other areas where we substantially agree. We will address those concerns and endorsements in this reply.

Existing Liabilities to be Listed

On page 5 of the July 17, 2009 brief the Department included the assets that Entergy received in the original sale, as listed in the Order of June 13, 2002 (DPS proposed finding #5). We recommend, in the interest of balance, that

the liabilities and risks should also be listed. Specifically, we recommend the inclusion of prior Board findings 23-26 in Docket 6545, pages 31-32.

DOE Litigation

The Department recognizes that the petitioners are engaged in a legal dispute with the U.S. Department of Energy over the costs for storage of spent nuclear fuel, and appropriately quotes witness Michael Mullett (DPS brief, page 25). The Department also recognizes that the petitioners propose to off-set fuel management expenses through litigation with DOE (DPS finding 71).

It is clear from the record that the legal actions the petitioners have taken against DOE are split between several time periods, and that any judgment or settlement could be divided such that compensation could be less (or non-existent) for fuel consumed during a relicensing period.

It is apparent that the interests of the petitioners and the interests of the State of Vermont could be very different. For example, the petitioners could enter into a single settlement with DOE that would pay a high percentage of management costs for fuel consumed prior to the license extension, and a lower percentage for fuel consumed after license extension. This would effectively shift the benefit such that it would repay costs directly to the petitioners, rather than offset fuel management costs after shutdown and through decommissioning. Likewise, the petitioners could choose to forgo vigorous litigation to collect damages for future storage costs that would otherwise be charged to the decommissioning fund. We must also consider that Entergy Corp. owns multiple nuclear plants and might choose to consolidate negotiations with DOE for its own benefit, and to the detriment of the State of Vermont (Vanags testimony, June 2, 2009, page 153). For these reasons we believe it is essential that the State of Vermont be listed as a party in any litigation with DOE related to spent fuel storage, or that at the very least, the State of Vermont should be assured of affirmative control regarding any settlement or litigation plan.

The Department appeared to be addressing this issue at the technical hearings, and we were surprised to see it receive so little attention in its brief. We urge the Board more fully address this area in its decision.

Petitioners' Responsibilities are Shared Jointly and Severally

In prior Vermont Yankee dockets both Entergy Nuclear Vermont Yankee and Entergy Nuclear Operations have been listed as petitioners. We believe the obligations for compliance with any Board decisions are held jointly and severally by ENVY and ENO, and should one entity not be capable of meeting the obligations the other should be held fully liable. In making this assertion

we draw partially upon the brief of the petitioners in which it is argued that NRC already has the regulatory authority to impose "joint and several regulatory responsibility" on co-licensees "in compelling circumstances where such action was necessary to protect public health and safety" (Entergy brief, page 82). The state of Vermont should have similar authority. We encourage the Board to include language in any decision that recognizes both ENVY and ENO as responsible for all obligations, including decommissioning to Vermont standards.

Projections of Reliability

The Department offers finding #34, which relates to the reports of Nuclear Safety Associates and the Public Oversight Panel. The reports of each find that if recommendations are implemented the plant can be operated reliably into the future, but the period of this reliable operation is not defined. It is important that as benefits are calculated and balanced, it is understood that considerable uncertainty remains as to the operation of the plant in the later years of any CPG for extended operation.

The Board has heard the public express significant concerns about incidents and unplanned shutdowns, and has made an effort to assess the impact these issues have had on reliability (Board questions of Michael Colomb, May 26, 2009 pages 178-180). WRC has heard similar concerns. We are not going to offer comments here about these issues or problems, for they are already documented within the record and have been well briefed by other parties. We will note that despite public perceptions, the plant has operated at a capacity factor of 93% over five years (Entergy proposed Order, findings 26-28 page 21). To our mind the plant has been reliable.

We are in agreement with the Department that if recommendations of NSA and POP are carried out the plant can be operated reliably for some period of time beyond 2012, but we are not convinced the plant can operate with certainty for the entire 20 year term, and in reading the reports of NSA and POP we do not believe this was their assertion. Therefore, we support Department finding 34 and recommend an additional finding that the reports of the Nuclear Safety Associates and the Public Oversight Panel have not determined the plant can be operated reliably for the entire 20 year period of the proposed Certificate.

The petitioners offer finding #290 on page 59 of their proposed order which states that the plant can be operated reliably for an additional 20 years. We believe the evidence presented shows the plant can be operated reliably for some period of time into the future, but the 20 year term identified in this finding is not supported in the record. We emphasize that this point is not based solely on issues of the physical reliability of the plant, but also on the

likelihood that the owner could make an economic decision to shut down prior to the end of the approved extension. The concern about financial decision making is raised because Entergy witness Thayer offered testimony that the company budgets on an 18 month operating cycle, and a 15 year rolling plan for capital investment. Mr. Thayer stated that a 10 year certificate of Public Good would not work within this system of budgeting. We worry that a need for significant capital investment with 5 or 10 years remaining in the permit period will not be approved if it cannot be justified within the 15 year rolling budget cycle (testimony Thayer May 20, 2009 page 64 and May 21, 2009 pages 80-81).That would have the same effect and is an equally important issue in relation to any anticipated public good.

Replacement of Condenser

We agree with the recommendation of the Department that replacement of the condenser should be mandated by a date certain. The Department notes on page 14 that "…if the state cannot be assured of realizing [these] benefits, Petitioners' basis for requesting extended operations is severely undermined and becomes questionable." There cannot be an actual assurance of operation throughout the 20 year extension and the benefits are always questionable to some degree, especially in the 'out' years, but we believe the Board should do everything reasonably possible to improve the likelihood of reliable long term operation. We call attention to Department finding #37 which notes that at some point the petitioners may decide not to replace the condenser at all, and identifies this as a point of concern, especially given that the petitioners' own witness has stated replacement of the condenser could be deferred and then cancelled without a CPG condition mandating its replacement (testimony of Michael Colomb May 26, 2009, page 188).

We understand that condenser replacement might occur over several refueling cycles, and that technical scheduling issues might make that impossible to accomplish prior to March 21, 2012. We agree with the Department that extending the requirement for replacement to December 31, 2014 affords the petitioners sufficient flexibility to accomplish the work, while also assuring it will be completed within a reasonable timeframe (DPS brief page 14).

Spare Transformer

The Department offers a recommendation on page 15 that the "Petitioners shall have a designated spare transformer in ready status prior to March 21, 2012 capable of maintaining an output of at least 80% of the plant's rated capacity." Yet, on page 54 the Department argues for language that such a spare transformer shall be a "full capacity replacement transformer," or alternatively that ratepayers shall be insulated from a the consequences of a reduction from the plant's rated capacity. We reject the recommendation on

page 15, and support the recommendation on page 54 that the petitioners must maintain a full capacity replacement capable of handing 100% of the rated capacity, or that Vermont ratepayers be fully protected against the negative consequences of a reduction in capacity.

Full Core Off-Load

The Department argues that full core discharge should be required at all times, a position that the WRC has consistently held in this and prior dockets. We agree with and strongly support this recommendation.

Reduced Pool Density

The Department does not appropriately address a reduction in density in the spent fuel pool that WRC sought (WRC-TB-2 and WRC-TB-3). We note that WRC-TB-3 asserts a reduction in density of the spent fuel pool would require the petitioners to purchase and load additional casks and an additional ISFSI while the plant is operating, and that this would shift some of the costs of decommissioning to the operating budget (WRC-TB-3, page 14). This assertion has not been disputed in the record. It is perplexing that the petitioners' proposed order offered finding 725 on page 127 asserting that "There is no evidence in the record that the issue of spent-fuel-pool density is related to a reliability issue or other issue separate and distinct from the radiological-safety issues raised by parties in the case." We urge the Board to reject this conclusion, and to review the benefits of a reduced pool density that have obviously been entered into the record.

We believe that a reduction in density to shift costs of additional casks from the decommissioning fund to operating expenses would be beneficial to the state from a financial standpoint, and is clearly under the purview of the Board.

Given the continuing concerns expressed by the Department and other parties about the adequacy of the decommissioning fund, it is reasonable to require the petitioners to reduce pool density as one means of addressing a projected shortfall in the decommissioning fund.

Entergy argues in their brief that spent fuel management is exclusively under the jurisdiction of the NRC and that this Board cannot interfere (Entergy brief, page 61). Entergy witness Hoffman states NRC requires that any change in the design of the spent-fuel racks or increase in spent-fuel-pool storage capacity be submitted for review and approval as a license amendment, and that NRC considers both methods to be safe. (Hoffman prefiled testimony March 3, 2008 page 4-5). Witness Hoffman also states that he does not believe NRC approval is required to reduce the density of the pool (Hoffman testimony May 19, 2009, page 129), and that NRC approval is not

required for an additional ISFSI, although he noted it would be subject to similar state requirements as the first ISFSI (Hoffman testimony, page 140). Witness Michael Colomb testified unequivocally that additional loading campaigns to place more fuel in dry storage do not require NRC approval (Testimony of Michael Colomb May 26, 2009 page 69). The petitioners' brief position appears to be that the Board can not compel it to change storage of spent fuel because that might conflict with an NRC regulation. However, regardless of preemption, the petitioners do have the ability to seek changes in wet or dry storage capacity, and to seek any needed license modifications directly from the NRC. This Board could easily recommend a reduction in density, and require the petitioners to use their best efforts to secure NRC approval to implement those recommendations. The argument of preemption will only take them so far.

Reducing density of the spent fuel pool is certainly a safety issue that must be considered by the NRC, but it is not exclusively a safety issue. A fire or loss of coolant incident would affect the reliability of the plant, and also the extent to which the plant can make an economic contribution to the state (Michael Mullett, May 28, 2009, page 72-73). The Board has the authority to rule on this issue as long as such a ruling does not directly conflict with an NRC order or policy (Michael Mullett, May 28, 2009, page 144-145).

We note that many residents of the region have expressed concern about the safety of dense storage in the spent fuel pool (WRC-TB-3, page 15), and the effect an accident might have on the economy of the region. Other parties have raised this same issue before the Board, and it has generated considerable concern from the governments of the neighboring states of Massachusetts and New Hampshire. Likewise, the Board has heard numerous citizen concerns at each of the public hearings conducted around the state. We are not, in this brief, asking the Board to take a stand on the safety issue, as several other parties have, but we note here this is a significant community interest that has been raised in multiple venues, and that relates directly to issues of reliability and economic benefit. There is sufficient evidence in the record that reducing density in the pool would reduce risks associated with those issues, and while the exact nature of that risk cannot be known it should be lessened if possible.

We are intrigued by the arguments in the VPIRG brief regarding low probability/high significance events, and appreciate their thoughtful analysis. However, we are not sure that it is necessary for the Board to review the physical risks of dense storage in detail in this docket because the Board has already found that reduced density is a better option, and that dry storage is preferable to wet storage (Docket 7082, page 81).

In docket 7082 the Board required that the petitioners address the possibility of reduced density if they sought another certificate of public good, but Entergy has not done so in any meaningful way. WRC brought this issue forward in our first meeting with Entergy on December 13, 2007, and we have raised it consistently since that time. The issue is before the Board in WRC-TB-3, page 14. We had hoped the petitioners would provide a series of proposed roll-back density levels so an assessment could be made of the financial benefits of several options, with a belief that a compromise between the original approved density level of 900 assemblies and current maximum density would also yield a reduction in the risk associated with a loss of coolant. We had hoped discussion and fact finding would yield a firm number of assemblies that would first satisfy the need to reduce the costs of decommissioning, while also satisfying the concerns about elevated risk raised by other parties, without imposing an undue burden upon the petitioners. Given that Entergy has not provided meaningful support to help resolve this issue despite multiple requests, and that the Board found in docket 7082 that a reduced density level is preferable (Docket 7082, page 81), WRC is requesting that the Board order a substantial reduction in pool density.

On June 19, 2009 the petitioners submitted a response to information requests made throughout the technical hearings, including "Attachment 2" which is a projection of pool density allowing only for full core offload. Note #5 identifies the capacity of the spent fuel pool as 3,353 assemblies. Note #3 identifies the size of a full core as 368 assemblies. Therefore, the current capacity of the pool allowing for full core offload is 2,985 assemblies [1]. Attachment 2 anticipates that, assuming the Board does not require a reduced density level, there will be 2,879 assemblies in wet storage at shut down in 2032. Each cask will hold 68 assemblies.

While, as we have noted and in spite of our best efforts, there is no data in the record to define what level a reduced density should be, this lack of data is directly attributable to the petitioners' refusal to address the issue[2]. We would certainly welcome a well reasoned alternative reduction in density, and would view favorably an action by the Board to have parties brief this point prior to a final decision. However, WRC has been arguing for a substantial reduction since our participation in Docket 7082 in 2006 and we do not believe it is prudent to hold off any longer simply because the petitioners have not adequately addressed the issue. Therefore, we are asking

[1] Witness Hoffman stated the capacity of the fuel pool allowing for full core offload is "Slightly less than 3,000…assemblies" (Hoffman testimony May 19, 2009, page 118.
[2] The petitioner argues in its brief that there is no information in the record for the Board to determine an appropriate density in the pool because that issue has not been litigated (Entergy brief, page 62, footnote 275).

the Board to determine a roll-back level, and as an example will discuss a reduction to a maximum of 50% of current capacity (minus full core offload), which would be roughly 1,493 assemblies.

If the board requires a reduction in density to 1,493 assemblies, it will require the movement of an anticipated 1,386 additional assemblies to dry casks. This will necessitate 21 additional casks be purchased prior to shut down, and will require a new pad to be constructed while the plant is operating.

The petitioners have not been clear as to the level of cost shift that would be associated with a reduction in pool density. We note that each cask costs roughly $1 million, and the cost of a second ISFSI is approximately $28 million, and there are other costs associated with moving fuel from wet to dry storage (WRC:EN.1-8b). If 21 additional casks and a new ISFSI are required to be paid for from the operating budget rather than decommissioning funds, the cost shift could easily be in the neighborhood of $50 million, which would address a part of the projected underfunding of the decommissioning trust. Shifting these expenses to operating costs will have a significant positive effect on decommissioning expenses.

<u>Additional ISFSI</u>

The Department brief has not addressed the location of a second ISFSI in any meaningful way, however, the brief filed by NEC directly embraces the WRC position that an appropriate site for a second ISFSI should be identified in this docket (NEC brief dated July 17, page 63). The Board is urged to adopt this point.

The Department addresses several issues regarding spent nuclear fuel, and notes that that on-site storage could be for as long as 100 years (DPS finding 69). It is our understanding that each cask is projected to have a 100 year service life, which is a regulatory limit that may be extended (Hoffman testimony on May 19, 2009 pages123-126, and Entergy brief pages 55-56), but that on-site storage in casks could be for an indefinite period of time and could be under management by the Department of Energy (Nuclear Waste Policy Act Section 135(a)(1)(C)). We also understand that in selecting the method of long term storage DOE "…shall seek to minimize the transportation of spent nuclear fuel, the public health and safety impacts, and the cost of providing such storage capacity" (NWPA, Section 135(a)(3))[3].

[3] The petitioner offers an interesting briefing point on page 53, stating: "…federal regulations provide that "[d]isposal of high-level radioactive fission product waste material will not be permitted on any land other than that owned and controlled by the Federal Government" and uses footnote 232 to identify the source as 10 C.F.R. Part 50, App. F ¶ 3. We make note that WRC is represented pro se, and does not have sufficient legal expertise to balance this

The Department is aware that a second ISFSI will almost certainly be needed at some point in the next 20 year period (DPS finding 64), and if DOE does not pick up fuel prior to shut down, which is the most likely scenario, a second ISFSI will be required whether an extended CPG is issued or not.

WRC has raised a number of important issues regarding the need for placement of a second ISFSI, among them is the density of development at the site and the potential for future projects and developments to be placed in space that might be needed for a second ISFSI (WRC-TB-3, page 15-16). WRC also notes that a decision by the NRC to require accelerated movement of fuel assemblies from wet to dry storage as a condition of continued operation could be precluded if there is not a viable location for a second ISFSI. This might necessitate the early shutdown of the plant, and the state would then forego projected benefits. (Buchanan, May 26, 2009, page 38-39)

The Board reviewed the issue of a second ISFSI in docket 7082, and required that this issue be addressed if the petitioners requested an extended CPG (Docket 7082, page 81). WRC also calls attention to Board Rule 5.402(D) which requires a petitioner to address all improvements that are reasonably related to facilities for which a CPG is required (WRC-TB-3, page 16). The petitioners provide finding 705 on page 124 of their proposed order that confirms a second ISFSI is anticipated.

WRC brings this issue forward with vigor because it is specifically addressed in the Windham Regional Plan with a policy to "Encourage a requirement that spent nuclear fuel (SNF) storage be resolved prior to any consideration of extending or reviewing the operating license of Vermont Yankee (Windham Regional Plan, page 95, WRC-TB-3, page 4). We do not expect this Board to resolve final disposition of spent fuel through the thousands of years of required SNF management, but we do ask that all issues regarding on-site storage be fully addressed. This has not yet been accomplished.

Because it is known that a new ISFSI will be required under any scenario, because the Board has previously acknowledged the need for an additional ISFSI in a new location, because the petitioners themselves have stated their agreement that a new ISFSI will almost certainly be needed, and because it is prudent to assume that no spent fuel will leave the site in the foreseeable future, specific documentation of an acceptable on-site location for a long-term ISFSI should be required prior to any new or amended CPG. We ask the Board to embrace the WRC position as briefed by the NEC on page 63 of their July 17, 2009 brief, and as discussed here.

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finding with our understanding of the NWPA. We encourage the Board to review this point regarding the long term storage of spent nuclear fuel on site.

Post Shutdown Use of Spent Fuel Pool

Entergy witness Cloutier testified that the petitioners may choose to continue using the spent fuel pool in a dense storage condition for an indefinite period of time following shut down (May 19, 2009, page 15).

We are concerned that the petitioners would propose maintaining the spent fuel pool in a dense storage condition following shutdown, especially in light of the very clear findings of this Board that a reduced density is preferable, and dry cask storage is a better option than storage in the spent fuel pool (Docket 7082, page 81). It is additionally concerning because we have been discussing the reduction of density with the petitioners since December 2007, and have been seeking data that would help to define an appropriate reduced level of wet storage. The petitioners have not only failed to adequately address reduced density, but have instead presented the possibility of extending dense storage indefinitely. The record shows continued dense storage offers no meaningful benefit to the public, but adds considerable risk.

WRC believes the Board should require the petitioners to empty the pool as soon as practical following shut down, granting only that fuel removed from the core may remain in the pool for the period required to allow for sufficient thermal cooling.

Decommissioning and SAFSTOR

WRC is gratified that the Department believes the plant should be immediately decommissioned when it reaches the end of the certificate period in 2032 (DPS finding 80, 84, discussion page 36), but WRC encourages the Board to require immediate decommissioning whenever the plant shuts down, even if that is before 2032. The Department offers supportive discussion on this point (page 30, page 36), and supportive findings (DPS finding 86, 125), but in spite of recognizing the importance of immediate decommissioning to meet demands of "orderly development of the region," the Department inexplicably recommends allowing for the use of SAFSTOR until 2032.

If we accept the position of the Department that the use of SAFSTOR after 2032 is not in the interest of the State, and that "…petitioner's request for flexibility to place the plant into SAFSTOR if necessary should be rejected by the Board" (page 36), then it stands to reason that placing the plant in SAFSTOR before 2032 will also present undue impacts on the orderly development of the region. This is especially so given the Department's embracing the harms of a precipitous drop off of jobs if the plant is placed in SAFSTOR (DPS finding 125). Likewise, Department witness Vanags has stated that a period of SAFSTOR will reduce the availability of knowledgeable plant employees, and thus deny the benefits of their legacy

knowledge (WRC-TB-3, page 9(d)(3), and testimony of Uldis Vanags, June 2, 2009, pages 223, 259). We urge the Board to recognize the statewide and regional benefits of immediate decommissioning, and to prohibit the use of SAFSTOR regardless of when the plant shuts down.

We appreciate that NEC has specifically embraced the WRC position, and briefed a need to decommission immediately following shutdown (NEC brief, July 17, 2009, page 63). We encourage the Board to adopt this position.

Funding of Decommissioning

Many citizens of the Windham Region have expressed especially deep pessimism regarding the viability of the decommissioning fund, and the evidence presented in this docket certainly supports that concern. The Department has articulated a position that NRC assurance of fund sufficiency is inadequate by itself, with which we agree (DPS brief, July 17, 2009, page 30). The Department correctly finds that NRC considers the fund to be adequate if it will provide for radiological decommissioning only, but does not mandate cleaning to "greenfield" status as required by the Memorandum of Understanding (DPS finding 74). The Department also notes, correctly, that NRC allows the fund to grow through an extended period of SAFSTOR (DPS finding 75), but does not specifically state in this finding that the period could be as long as 60 years following shutdown.

The Department did not, however, fully identify all the deficiencies in the current decommissioning cost analysis. Other parties, specifically VPIRG, CLF and NEC, have done a more thorough job of critiquing projected costs, particularly the CLF which provided an expansive list of excluded costs (CLF finding 18). We suggest the Board include the CLF list as a starting point, and add property taxes as another item that has not been budgeted. NEC offered a specific finding that these taxes are not included in the decommissioning cost analysis (NEC finding 56). To this point WRC is concerned about the use of a null value in the line item for property taxes within the Decommissioning Cost Analysis (EN-TLG-2)[4] because the petitioners have facilities in two of our member municipalities. In Vermont property taxes are assessed at both the state and municipal level, and the petitioners have acknowledged that property taxes "would most likely be assessed at fair market value" (EN-TLG-2, section 3, page 19, and WRC-TB-3, page 10). We cannot know exactly what those property taxes will be, but they will certainly not be negligible. Indeed, witness Buchanan identified a potential property tax liability of $100 million, but acknowledged it could be reduced by as much as 50% (Testimony of Tom Buchanan, May 26, 2009, page 23).

[4] See EN-TLG-2, Appendix D, Page 49 of 63, line item 1a.4.2. Property taxes are similarly listed as a null line item for all other periods, and in all scenarios.

When reviewing the economic impact of closing the plant the petitioners make note in their proposed findings that "The single largest tax source to local governments in Vermont is the property tax, and the loss of property-tax payments accounts for most of the tax reduction that would occur if the station did not continue to operate" (Entergy proposed order finding #245, page 52, Exh. EN-RWH-1 at 23). Balancing the loss of property tax revenue necessitates an estimate of what those taxes would be while the plant is in SAFSTOR or undergoing decommissioning, and the petitioners have provided no basis for that review. The petitioners hold that there is no means of determining the property tax after shutdown (Entergy proposed order finding 600), but this is simply not so. It might be difficult to determine a projected property tax with certainty, but this does not justify using a line item value of zero. The Board should require that the petitioners list some value for this line item, and that it be justified within the decommissioning cost analysis.

WRC notes the testimony of Paul Chernick and the related briefing points provided by CLF that focused on the potential shortfall of the decommissioning fund. We are concerned that if the decommissioning fund is inadequate at the time of shutdown, it may actually decrease in value until completely depleted, rather than gain value. To illustrate this point, WRC recommends the Board recognize the following additional findings:

1) The value of the Decommissioning fund was $374 million on April 30, 2009 (Jacobs testimony on May 28, 2009, page 29). Alternatively, the petitioners include a footnote in their brief stating "The Decommissioning-Trust Fund balance as of April 30, 2009, was $373,996,040. Exh. DPS-4 (Entergy brief, page 70, footnote 308).

2) The cost to place the plant into SAFSTOR is approximately $226 million over a six year period beginning in 2012 and extending through 2017. (EN-TLG-2, Section 3, page 28).

3) The annual cost to maintain the plant in SAFSTOR and care for the spent nuclear fuel varies between $6.18 million and $6.41 million. (EN-TLG-2, Section 3, page 28)

4) The cost to remove the plant from SAFSTOR and decommission the facility is approximately $385 million over seven years (EN-TLG-2, Section 3, page 28).

WRC notes that if the plant were to have shut down on April 30, 2009 (the last date on which the fund balance has been identified in this record), the fund would begin at $374 million, but would need to payout $226 to place the

plant in SAFSTOR, leaving approximately $148 million. In order to pay for decommissioning at a later point, the fund would need to grow sufficiently to cover the annual maintenance costs of roughly $6.4 million and meet inflation, and then grow sufficiently to amass roughly $385 million for final decommissioning. This is simply not possible at projected interest rates. Indeed, a $148 million balance must grow at more than 4% simply to cover the ongoing maintenance and fuel storage costs, and an even higher return rate would be needed to meet inflation and secure sufficient funding for eventual decommissioning.

WRC believes the fund is especially vulnerable if the plant were to shut down prior to 2032, and hopes the Board will require the petitioners to make the fund sufficiently whole to fully fund decommissioning immediately upon shutdown whenever that occurs. We support DPS finding 86 as to the need for immediate decommissioning

We also take note that NRC allows a petitioner to assume a maximum 2% rate of return over time (DPS finding 83). We are concerned about market fluctuation and variable inflation, and the risk that a troubled market or extreme inflation could render the fund insufficient at any point in the future. Witness Chernick reported that the fund has actually lost value in real terms (Chernick prefiled testimony, February 11, 2009, page 10), and there is no assurance this will not occur again. For this reason we strongly support Department finding 84, which requires a parental guarantee, but we believe the effective date of this guarantee should be immediate, and not in 2032. We note again that if the plant is moved into SAFSTOR while the fund balance is low (as it is now), the fund may not be sufficient to provide for annual maintenance and eventual decommissioning, and might instead lose value or even be fully depleted during SAFSTOR.

The Department recognizes that if the plant shuts down prematurely it would eliminate operating revenues as a potential source of contributions to the decommissioning fund (DPS brief, page 32), but does not mention that a premature shut down would require the withdrawal of substantial funds. We believe it is essential to understand this dynamic, and that the Board should clearly recognize the risk of a funding shortfall especially if the operation were to cease prematurely.

We are concerned that the performance of the fund to date has not assured decommissioning could take place in a timely manner, but instead provides basis for concern that the opposite is true. The residents of the region have accepted the presence of this operating facility because the benefits have been found to outweigh the costs, but when the plant ceases operations most of the benefits will disappear. It is essential that the decommissioning fund be

sufficient under all possible scenarios to fully decommission the plant immediately following shutdown.

Payments to the Decommissioning Fund

The Department includes a proposed condition on page 31 that would require the petitioners to make payments into the fund such that it is sufficient by 2032. As noted elsewhere, we believe it is critical that the fund be made whole prior to 2032. This could be accomplished with a parental guarantee and letter of credit, or through direct cash payments into the fund. CLF also addressed decommissioning funding and noted that wind facilities are required to fully fund decommissioning prior to the start of operations, which WRC has supported. We encourage the Board to require full funding or a parental guarantee such that the plant could be fully decommissioned if it ceased operation at any point in the future.

When Entergy purchased the plant it assumed all obligations for decommissioning. Until that point the previous owners were contributing $11.4 million annually to the decommissioning fund[5], but Entergy reported such contributions would no longer be necessary. The decision of the Board in docket 6545 recognizes the commitment of Entergy to make the fund whole, should that be necessary, as a positive aspect of the sale:

> (2) Discussion: Decommissioning
> Ratepayers have made significant contributions, and are currently being charged costs, to fund the eventual decommissioning of Vermont Yankee. VYNPC estimates that decommissioning in 2012 will cost $621 million (in 2001 dollars). The present fund balance of approximately $304M would be inadequate to pay for complete dismantlement. In order to bridge the gap and assure adequate funding for decommissioning in 2012, VYNPC plans to collect $19–23M per year as a portion of its FERC-approved rates to build the fund. Under the proposed sale to ENVY, ratepayers no longer have this obligation; instead, ENVY would be responsible for any needed decommissioning contributions and could not pass them on to ratepayers. (Docket 6545, page 63-64)
> …
> It is important to recognize that we find a reasonable possibility that decommissioning fund contributions would be lower than presently expected under continued ownership. But, it is also possible that costs could increase, or that fund growth would be insufficient. When we weigh the financial savings that may result from lower decommissioning fund contributions, we must consider that these

[5] Page 34, docket 6545. This annual contribution by VYNPC, if continued, would have totaled in excess of $100 million over the period from 2002 -2012.

> savings are a potential benefit under current ownership. By contrast, the sale to ENVY provides the actual elimination of all ratepayer contributions. Indeed, ENVY's commitment to make whole any future deficiencies in necessary decommissioning monies — whether caused by technology changes, lower fund investment returns, or NRC regulatory changes — is a very positive aspect of the proposal before us. (Emphasis added) (Docket 6545, page 65-66)
> …
> (5) The Use of Decommissioning Trust Funds
> We carefully considered two dangers in this area: (1) the risk that there might be insufficient funds for proper decommissioning: and (2) the risk that Vermont ratepayers might turn out to have contributed more than necessary to the relevant Decommissioning Trust Fund. As to the first risk, the record shows that the fund is likely to be deficient (not excess) if decommissioning takes place before the end of Vermont Yankee's license term in 2012. However, Entergy has committed sufficient funds to make whole any such deficiency. Indeed, transferring that obligation from Vermont utilities to Entergy is a significant benefit of the current proposal. (Emphasis added) (Docket 6545, page 151-152)

The record shows that after 2012 immediate decommissioning is preferable to the use of SAFSTOR, and we believe it is necessary to meet the standards of the orderly development of the region. We also believe that at the time of purchase the petitioners accepted all risks that the decommissioning fund might be insufficient, and made a commitment to make that fund whole, should it become necessary[6]. SAFSTOR was recognized as an option to deal with a premature shutdown prior to 2012 or unexpected occurrences, but was not accepted by the Board as a de facto means of making the fund whole. Indeed, the Board recognized that "SAFSTOR should not be seen as a panacea for funding decommissioning" (Docket 6545, page 65), which is what Entergy is now proposing.

We are concerned that the petitioners sought approval to purchase the plant, and the Board granted that authorization, under the assumption that full funding of decommissioning in 2012 was more likely to occur under Entergy's ownership than continued ownership by the utility consortium, but given

[6] The board is encouraged to carefully review the characterization offered by the petitioners in their initial brief, page 2, which quotes Mr. Thayer's testimony as saying that in 2002 the petitioner made a calculated decision to provide value in beneficial electric rates, rather than in payments to the decommissioning fund. We believe the record in docket 6545 shows the petitioner honesty but mistakenly believed the fund as it existed in 2002, and when coupled with investment return and decommissioning efficiencies, would be sufficient to fully decommission the plant, but accepted that additional contributions might be required and could not be passed along to Vermont ratepayers.

Entergy's decision to cease funding the decommissioning trust, the exact opposite appears to be true. We believe the Board should require funding of the decommissioning trust to at least the levels that would have been provided under prior ownership, or a parental guarantee to that effect.

Decontamination Standard

We support the proposal by The Department that the site be decontaminated to the 10/4mrem standard, and that it be coupled with the application of the ALARA principle, as listed in Department findings 89-90. We believe this level of remediation should occur regardless of proposed future use, and ask the Board to make this a requirement.

We are especially concerned because in answering the WRC information request the petitioners declined to specify an end use, and offered that actual decontamination levels would be dependant on that use and "Derived Concentration Guideline Levels" (WRC:EN.1-11 and WRC:EN.1-3, Buchanan testimony on May 26, 2009, page 16-18). We ask the Board to require the site be cleaned to levels allowing unrestricted use (specifically), and that the 10/4mrem and ALARA standards be mandated[7].

Removal of Structures

We are in strong disagreement with the Department's acceptance of a proposal by the petitioners that structures at the Vernon facility be removed to only three feet. We note that NEC has specifically embraced the position of WRC, and encourage the Board to do likewise (NEC brief, July 17, 2009, page 63).

The Memorandum of Understanding signed by both the petitioners and the Department on March 4, 2002 (Docket 6545) clearly states that the petitioners will remove "all structures." WRC believes this agreement requires the removal of all structures, both above and below ground. Any party could have offered alternative language at that time to require removal of just some structures, or to some specific depth, or to a specific "industry standard," but no such language was offered, and the agreement is clear.

The removal of all structures will entail considerable expense, and a less stringent requirement to remove structures to just three feet would reduce costs. When Maine Yankee was decommissioned the difference in cost between the removal of all structures and removal to only three feet was

[7] The petitioner asks to meet a less restrictive standard of 25mrem with ALARA. Witness Vanags provided a context in which to discuss the proposals for a standard when he stated a typical background reading is 100 mrem (Vanags testimony June 2, 2009 Page 80-81). A 25 mrem standard would add to typical background by 25%, while a 10 mrem would only increase background by 10%.

estimated at $100 million (testimony of Uldis Vanags, June 2, 2009, page 234, prefiled testimony of Vanags, February 11, 2009, page 9). However, the petitioners have agreed to the removal of all structures, and by extension to the costs of that removal. Allowing a change now should not be approved unless there is a new agreement that offers the state of Vermont and residents of the Windham Region a comparable value in return[8].

The Department argues that allowing the structures to remain in place will not interfere with the orderly development of the region. We disagree. It may be that a future developer of the land will accept a discount in the purchase price to compensate for buried structures, or it may be that no discount could adequately compensate for those structures. Based on the record it is impossible to know what the future use might be, or what price the land might sell for. Nor is it possible to determine if any specific future use would be precluded by remaining structures.

We also note that some remaining structures may include non-radiological contaminants that would meet contemporary standards for abandonment, but that might be listed as harmful in the future when redevelopment is proposed. Remaining structures could contain many materials other than concrete, some of which could pose potentially serious environmental impacts. For example asphalt, wood, steel, drywall and many other elements are part of the structures. This debris may include contaminants such as mercury, lead, arsenic, asbestos and other harmful substances. All of this material should be removed. WRC has encountered this situation multiple times in our very successful Brownfield program, and is concerned the costs for the future redevelopment of the Vermont Yankee site might be imposed on taxpayers through restoration requirements we are not presently aware of. It is not possible to know what standards will exist at the time of redevelopment, and thus it is important to remove any potentially suspect material at the time of decommissioning (Buchanan testimony, May 26, 2009, page 12).

Following discussion with the petitioners at a public meeting on March 20, 2008, WRC stated clearly in our letter of April 16, 2008 that all structures should be removed, including those below the surface (WRC-TB-3, page 3).

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[8] Mr. Young questioned Mr. Vanags about the substitution of the 10/4 radiation standard in place of the existing requirement for removal of all structures (Vanags testimony, June 2, 2009, page 241). The value of this exchange is not comparable. The Department argues convincingly that the incremental cost of meeting the 10/4 standard is very low, and uses a figure of $11 million dollars as estimated at Main Yankee (DPS brief, page 39). The estimated cost of removing all structures as agreed to in the MOU is $100 million (Vanags testimony, June 2, 2009, page 234). Removing all structures and debris would substantially reduce the radiological hazard, but simply reducing the radiological hazard would not provide many of the ancillary benefits of removing all structures.

We asked the petitioners to provide a list of subsurface structures they expected to bury in place including their locations, nature, depth, and cost of removal (WRC:EN.1-1), but they declined to provide the requested information. Instead, the petitioners simply listed structures that might extend below the three foot level, and did not provide further information (WRC-CROSS-1). The list of these structures is substantial, and their placement throughout the property is broad (WRC-CROSS-5). The structures that would remain include simple foundations, and tunnels large enough for a man to walk through (Vanags testimony, June 2, 2009, page 145). There can be little doubt that these structures would give a future developer pause, and that alone may make it more difficult to find and fund an appropriate future use.

WRC recognizes that some structures, such as the bottom of the reactor building, may be so deep as to pose no threat to redevelopment and removal might be overly burdensome, potentially dangerous, and unduly expensive. For those reasons we hoped petitioners would offer alternative proposals as to which structures could reasonably remain without interfering with the orderly development of the region (Buchanan testimony May 26, 2009, page 11-14). However, in the absence of adequate information we were not able to identify specific structures that could remain without undue negative impacts. Therefore, we ask the Board to recognize the clear and unambiguous language in the MOU to require the removal of all structures, and to require the decommissioning cost analysis be amended to account for these expenses. We also ask the Board to recognize that at the time of decommissioning the petitioners may seek authorization to leave some specific structures or parts of structures in place, and parties will have a chance to address a better defined plan at that time. This will allow parties to argue issues of workforce safety and general cost based on a more complete understanding of proposed future uses, and with data that more accurately reflects the demands of any new proposed standard.

The Department offers an interesting analysis in footnote 25 on page 40, which seeks to compare the remediation of the Vermont Yankee site with remediation of the a wind facility in Sheffield and Sutton, Vermont. The decommissioning of that wind generation facility is only required to a two foot depth (Docket 7156). WRC recognizes the same standard has been applied to the Deerfield Wind proposal in Searsburg and Readsboro (Docket 7250). The Searsburg/Readsboro site is located in the Windham Region, and the WRC is a party to this case. The analogy offered by the Department is faulty in a three of ways.

First, the two foot standard was established as part of an original certificate of public good, and was agreed to by the petitioners. In contrast, the Vermont

Yankee standard of "remove all structures" was established by agreement with the petitioners at the time of the sale. More limited language such as that offered in the two wind cases was available to the Vermont Yankee petitioners when writing the MOU, but language requiring the removal of all structures was used instead.

Second, the two wind facilities are located on rocky mountaintops with little top soil. Structures will be drilled, trenched, and buried within the underlying bedrock and in some cases perhaps concrete will be poured into the surrounding rocky fissures. Removal of all buried structures might cause more damage than leaving those structures in place (Docket 7250, finding 334). Simply removing to two feet and covering with soil would go a long way to placing the site back into the original condition, without further disrupting the bedrock. This is certainly not true at Vermont Yankee, where soil and bedrock conditions do not preclude the removal off all structures, although WRC recognizes that some components at great depth may be similarly attached to the bedrock.

Third, the two wind facilities are on ridgelines that are established as areas where most other types of future development will be prohibited. Thus, leaving some buried structures in place will not have an undue impact upon the orderly development of the region. Indeed, protecting the underlying bedrock and allowing rapid regrowth of vegetation following decommissioning is probably the best way to address the future uses listed in the regional plans. This is obviously not true at the Vermont Yankee site, which WRC envisions will see redevelopment as an industrial site. As noted above and in testimony, we believe extensive buried structures will reduce the value of the land and might inhibit future development.

Rubbilization

The Department proposes that "…the practice known as "Rubbilization" where demolition concrete is used to back fill excavations and foundations shall not be permitted" (DPS brief page 42). We strongly agree with this position, but ask the Board to use more expansive language. Construction and demolition debris includes many materials other than concrete, some could pose potentially serious environmental impacts. For example asphalt, wood, steel, drywall and many other elements are part of the structures. This debris may include contaminants such as mercury, lead, arsenic, asbestos and other harmful substances. All of this material should be removed and not buried in place.

The petitioners have made note in their brief that the record is confusing as to the definition of "rubbilization," but answer this confusion as follows: "The differences in definition are insignificant for purposes of this docket, however,

because Entergy VY has agreed to use clean fill from off-site as fill material and will not use construction debris from on-site as previously assumed in the TLG study" (Entergy brief, footnote 200, page 47).

We recommend the Board adopt Entergy's language that says "…the practice known as "Rubbilization" where demolition debris is used to fill excavations and foundations shall not be permitted."

Operating Costs

We are concerned that the Department has included a disputed operating cost figure in their brief at finding 99. The Department lists "typical nuclear power production costs to be on the order of 1.8 cents per kWh." In fact, much more precise data is available in the record. Specifically, the report of Nuclear Safety Associates includes a graph on page B-6 of the appendix which shows the cost of production at Vermont Yankee to be just above 2.5 cents per kWh. The Department includes a production cost in its brief as a measure against efficiency, which is listed as 2.4 cents per kWh in 2007. While we understand that the data in the NSA report was initially confidential, it has been published by the Department and is now in the public domain. It is not reasonable to use a broad industry average or "typical" cost when a more precise and directly related figure is available. The decision of the Board should be as accurate as possible, and should use the plant specific number.

WRC understands the relationship of base load and peak load power, and understands that in all probability "as a baseload facility, VY power would still be dispatched and used even if additional DSM or energy efficiency measures were implemented" (DPS findings 100). Yet, we also believe it is important to recognize the relative value of DSM and efficiency against this power source, and thus encourage the use of the data point in the NSA report.

Sharing of Excess Decommissioning Funds

The Department includes a proposed condition on page 66 of their brief that would have any excess decommissioning funds split, with 55% going to CVPS and GMP, and the remaining 45% to the petitioners. While we believe it is highly unlikely there will be excess revenue following decommissioning, it remains a distant possibility if the investment market rebounds with vigor, if DOE is held fully responsible for all spent fuel costs, if decommissioning standards are allowed to be dictated by the more modest NRC requirements, and if costs are favorably influenced by other unexpected events and conditions.

It is our understanding that when the petitioners purchased the plant they entered into an agreement that allowed for a split of excess decommissioning funds as listed under paragraph 3 in the Memorandum of Understanding dated March 4, 2002. We believe the Board rejected this paragraph in the order in Docket 6545 dated June 13, 2002, and required that any excess monies be returned exclusively to VYNPC.

It is not clear why the petitioners should be granted any of the excess monies currently in the decommissioning fund. It is our understanding those monies were collected from ratepayers, and that the Board has already established that 100% of any excess should be returned to ratepayers.

We also understand that the petitioners may be required to add to the decommissioning fund in the future, and that as a merchant plant any such new additions would not be collected directly from ratepayers. If the petitioners do contribute additional funds directly, and the decommissioning trust has excess monies, the Board might conclude that those additional funds should be returned to the petitioners under a policy of "first in, first out."

WRC has broad expertise in many areas, but we are serving here pro se, and do not profess any special expertise in contract law. With that in mind, we ask the Board to carefully review the proposal for a spilt of any excess decommissioning funds, and to be very clear in its decision as to why funds are, or are not, to be split with the petitioners.

Economic Benefit to the State

The Department goes to great lengths to list all the potential economic benefits of continued operation, and notes in passing that those benefits are based on a full 20 years of operation (DPS finding 106). It follows that the benefits would be substantially less if the plant were to operate for less than 20 years, and we believe an additional finding is appropriate that makes this point clear.

We also note that the Department and the petitioners utilized prospective economic analysis in their presentations of economic benefit, and each failed to conduct retrospective or case studies of economic impacts following closure of other nuclear plants. We are especially disappointed that the Department opted to completely ignore an alternative economic impact report provided to Mr. Vanags and to the WRC (among others), which catalogs actual changes following the closure of Maine Yankee.

Mr. Vanags addressed the closure of Maine Yankee in his testimony and made note that statewide there was very little impact, but that within the

immediate region of Wiscasset the effect was "devastating" (testimony of Uldis Vanags, June 2, 2009, pages 245-246). Mr. Vanags was employed by the state of Maine at the time, and has testified that he still owns property in Maine, and we believe his voice deserves special consideration regarding statewide and regional impacts.

The Department identifies some of these regional impacts in findings 121-123, specifically calling attention to Vermont Yankee serving as one of the top five employers in Windham County, with a total site employment of 642 persons. WRC supports these findings. WRC and this Board have heard from numerous residents of the region and employees of Vermont Yankee who advocate continued operation. These voices too deserve special recognition. WRC has two specific regional plan policies that call for the development and support of well paying jobs (WRC Regional Plan, Economic Policies, pages 55-56, policies 1 and 6, and WRC-TB-3, page 4). While Mr. Vanags has certainly raised questions about the broad statewide impacts of the closure of Vermont Yankee, his testimony clearly establishes the likelihood of a pronounced negative local and regional impact.

NEC has been especially assertive in arguing the lack of a demonstrated statewide economic impact, and has pinned part of that argument on the failure of the petitioners to provide "real world" analysis of prior closings (brief of NEC, July 17, 2009, pages 8-10). We share a level of disappointment with NEC regarding this shortcoming on the parts of both the petitioners and the Department.

We hope the Board will take note of the arguments of NEC, and the testimony of Mr. Vanags. We encourage the Board to recognize some level of uncertainty regarding statewide economic impacts, but hope the Board will likewise recognize that within this immediate region there is no uncertainty whatsoever---the negative economic impact of plant closure will be significant whether it occurs in 2012 or 2032.

Power Purchase Agreement

WRC recognizes the Department has greater expertise with regard to statewide benefits such as electric rates and revenue sharing, and in general we support their positions. However, we would be remiss if we did not make our concern about the lack of a power purchase agreement clear at this juncture. We made note in WRC-TB-2 and WRC-TB-3 that our constituents have been especially sensitive to the "assumption of highly favorable electric rates delivered to the consumer," and that the petitioners have used this public perception to build support for continued operation. In WRC-TB-3, dated April 16, 2008, we urged the petitioners and the Board to assure a minimal rate guarantee that would benefit Vermont ratepayers prior to

discovery or technical hearings. Unfortunately a new PPA has still not been secured.

When we spoke with the petitioners at a public meeting on March 20, 2008, the contract price for electricity was 4.1 cents per kWh, while the market price was hovering at around 8 cents per kWh (reflected in minutes of the meeting provided as informational exhibit WRC-TB-12, and corrected into the record in testimony of Mr. Buchanan May 26, 2009, page 6-7). Entergy reported their cost of production was in the neighborhood of 2 cents per kWh (prefiled testimony of Richard Lester, March 3, 2008, footnote page 27)[9], and we have since learned that the actual cost of production is closer to 2.5 cents per kWh (Report of Nuclear Safety Associates, Appendix page B-6). We bring this data forward now to point out that the current contract appears to offer value to ratepayers and also appears to allow the petitioners a reasonable profit margin. Given that the current contracted electric rate is viewed favorably by the public—as reflected in comments at public hearings—and is apparently profitable for the petitioners, we believe it is feasible for the petitioners to develop a beneficial contract, and we are disappointed that it has taken so long. We agree with the Department and other parties that a new contract is essential to a finding that continued operation is in the public good, and we urge the Board to require a contract with composite benefits at least comparable to the present contact.

Revenue Sharing Agreement

As noted above, WRC recognizes that the Department has greater expertise with regard to statewide benefits such as electric rates and revenue sharing, and in general we support their positions. In its findings the Department has placed a value on the RSA. Specifically, Department finding 109 quotes witness Thomas and states that the RSA would have an "extreme low case" value of $159 million and an "extreme high case" in excess of $900 million, while in finding 114 the Department considers a specific scenario and concludes that the value of the RSA "could be quite small and conceivably zero."

If the Department recognizes the value could be zero, then this would certainly negate finding 109. We draw attention to this point because the evidence presented clearly raises questions regarding the potential value of an RSA, and other parties have carefully briefed this issue.

[9] When Entergy representatives met with the WRC Energy Committee on March 20, 2008 they were asked about the cost of production at Vermont Yankee. They declined to provide a firm answer, stating that was proprietary information. Commissioners asked if the data offered by Mr. Lester listing industry average costs between 2001 and 2006 was reasonable, and we were told VY costs were a bit higher. We asked if 2 cents per kWh was a reasonable ballpark number, and Entergy responded in the affirmative.

WRC has been concerned that the RSA is for only a 10 year period, while the petitioners are seeking a 20 year extension (WRC-TB-3, page 10). We encourage the Board to review the data and appropriately value the RSA. We also encourage the Board to embrace the DPS's cautionary language offered on pages 52-53.

The "General Good"

We note the short discussion of "General Good" provided by the Department on page 59 of their brief, and that it neatly distinguishes this requirement from "Orderly Development of the Region." We also appreciate the briefing provided by the petitioners with regard to their assertion that the DPS reading of this requirement would be at least in part "standardless" (Entergy brief, page 23).

WRC has stated repeatedly that it neither supports nor opposes this petition (WRC-TB page 2 line 24, WRC-TB-2 page 11, WRC-TB-3 page 17, testimony of Commissioner Buchanan May 26, 2009 page 19 line 21). We offer that statement again here specifically because the Department concludes that if certain conditions are met the project "…will not unduly interfere with the orderly development of the region taking into account the land-use policies and the recommendations of the Town of Vernon and the Windham Regional Commission" (DPS brief, finding 85, page 33). The petitioners have concluded likewise (Entergy proposed order, finding 69), but did not predicate that on meeting any specific conditions. The petitioners also made note that WRC has taken a neutral position with respect to the Continued Operation (Entergy proposed order finding 64).

WRC has raised a number of concerns through this process, some supporting the petitioners and some not, but always recognizing that while not every concern will be favorably addressed, each must be considered. We have looked to our Regional Plan for direct guidance, and listened carefully to our community. In some areas there is widespread agreement, while in others our Regional Plan offers conflicting position statements that are not easily reconciled, and the community has voiced strongly contradictory points of view. One of the roles of government in all of its forms is to recognize and reconcile the divergent viewpoints of a vibrant democracy. This cannot be completely accomplished in a Regional Plan which is simply incapable of identifying all potential conflicts under any and all development contingencies.

When assessing the "Orderly Development of the Region" the Board can comfortably consider specific issues in isolation and find the proposal conforms on each or does not. To our view an analysis of "General Good"

requires a more nuanced balancing of the various interests and policy objectives. To balance does not mean to ignore. A Regional Plan is not simply a document of iron-clad ordinances, but includes a projection of underlying values which by their nature must remain somewhat imprecise.

In WRC-TB-3 we offered comments to the petitioners (and the Board) following the filing of their original petition in this docket. In those comments we made note that the petitioners had referenced selected Regional Plan policies in addressing Orderly Development, but had missed a few others, and we then listed those policies. First among those was energy policy #4, published on page 47 of the Windham Regional Plan as follows:

4. With regard to all energy generation, transmission and distribution projects:

    a. Adhere to a high environmental standard that includes avoiding negative environmental impacts to the extent possible and adequately minimizing and mitigating those that cannot be avoided;

    b. Conduct thorough and proper studies and analyses of all anticipated socioeconomic and environmental impacts, both positive and negative;

    c. Adequately address all areas of concern regarding proposed developments; and

    d. Effectively and adequately address all issues related to facility operation and reliability, recognizing that in some instances they are inextricably intertwined with public health and safety concerns.

We have been guided by this policy, and where elements of the proposal do not fall clearly into "Orderly Development" we have viewed them through the prism of "General Good," recognizing that the Board should address "all areas of concern regarding proposed development" in order to adequately give weight to the Regional Plan and the underlying regional interest. We hope the Board will carefully balance each concern raised by WRC and by the other parties, recognizing that even where those concerns may not be rooted in narrowly defined or specific standards, they are not "standardless."